

California Regional Water Quality Control Board
Santa Ana Region

April 26, 2002

ITEM: 11

SUBJECT: Resolution Requesting Cleanup and Abatement Account Funds (American Trader Settlement) for Cleanup of Discharges to Newport Bay, Maintenance Dredging, and TMDL Compliance-Resolution No. R8-2002-0047

DISCUSSION:

The Cleanup and Abatement Account (CAA) was created by Water Code Sections 13440-13443. Monies received from court judgements and the assessment of administrative civil liabilities fund the CAA. The management of the CAA is the responsibility of the State Water Resources Control Board (SWRCB). Funds from the CAA are available for contract services to cleanup a waste or abate the effects of a waste discharge and to remedy an actual or potential unforeseen public health threat. The SWRCB, the Regional Boards, or any public agency with the authority to cleanup or abate the effects of waste discharges are eligible for funding from the CAA. The SWRCB allocates monies from the CAA for special projects and for emergency projects on a case-by-case basis.

On February 7, 1990, an oil tanker, "American Trader", ran aground approximately 7,200 feet off the Huntington Beach shoreline. Approximately 416,600 gallons of crude oil were spilled, and some of the oil came ashore along Huntington and Newport Beach between February 8 and 12, 1990. The spilled material was cleaned up as far as practicable. The parties responsible for the spill entered into a settlement agreement that resulted in a contribution of \$3.8 million dollars to the Cleanup and Abatement Account. The City of Newport Beach and the Regional Board are jointly requesting that the SWRCB allocate this amount to address and cleanup serious water quality problems that have been identified in Newport Bay.

There is a serious threat to public health from microbial pollution, toxicity, and sedimentation in Newport Bay waters at numerous locations. These water quality problems are exacerbated by sedimentation that impedes circulation, eutrophication from nutrients (including a major source of phosphorous in the sediment), and discharges of toxic substances in the sediment. The Orange County Health Officer routinely closes portions of the Bay for extended periods during the peak recreation period due to microbial contamination of the bay waters. All the sources of these problems have not been identified. Low mixing

due to siltation and urban runoff from tributary areas discharging into the bay from storm drains are suspected sources of the microbial contamination.

The Regional Board has established Total Maximum Daily Loads (TMDLs), in accordance with Section 303(d) of the Clean Water Act, for discharges of fecal coliform bacteria, sediment, and nutrients into Newport Bay, in order to correct these serious water quality problems. The USEPA will be establishing TMDLs for a number of toxic substances in Newport Bay water, and toxic substances in the sediment. The Regional Board has also adopted Implementation Plans for the adopted TMDLs, and is developing an implementation plan for the TMDLs for toxic substances that will be promulgated by the USEPA.

The Region Board, the Department of Fish and Game, the City of Newport Beach, the County of Orange, and other cities in the Newport Bay watershed have established the Newport Bay Watershed Management and Executive Committees. This Watershed Committee has developed and implemented plans to comply with the TMDLs established by the Regional Board. All the TMDLs established by the Board require that watershed based solutions be developed by the watershed stakeholders, and that the stakeholders jointly fund and implement these projects throughout the watershed.

The most significant project being developed and implemented by the watershed stakeholders is the restoration and expansion of the two sediment retention basins in Upper Newport Bay that are part of the watershed sediment control plan, and a plan to ensure the long term maintenance dredging for these basins. This project is in design and is scheduled to start construction in early 2004. As part of this project, the Corps of Engineers requires that the local agency participants in the project, the County of Orange and the City of Newport Beach, provide assurances that they will provide for the long-term maintenance of the restored areas in Newport Bay.

The City of Newport Beach and the Regional Board are jointly applying for the CAA to be used for water quality improvement projects in Newport Bay. The main project to be funded is the long-term maintenance dredging of Newport Bay to ensure compliance with the TMDL for sediment. The funds will be put into an annuity account by the City and invested in low risk annuities to generate funding for maintenance dredging in Newport Bay, in perpetuity. It is estimated that the maintenance dredging needs will start at \$3 million per year, following the completion of the dredging/restoration project, and reduce over time as the watershed is built out and sediment transport reaches equilibrium. It may take 50 to 200 years for the watershed to stabilize. Based on past experience, there is also a need for more maintenance dredging after El Nino years and major storm events, which cannot be predicted. Therefore, the City will need to manage the maintenance-dredging fund on an as-needed basis. The City will use the \$3.8 million in principal, along with other funds, to generate the income necessary for the maintenance dredging. Other agencies and watershed stakeholders will add

to the account to meet the maintenance dredging needs and to fund other TMDL compliance projects in Newport Bay.

The Regional Board will enter into a Memorandum of Agreement (MOA) with the City to establish and manage the annuity fund. The MOA will be completed by May 31, 2002, and the Regional Board will then request the transfer of CAA funds to the annuity account. It has been estimated by the Corps of Engineers that the first maintenance dredging will be required by approximately 2017, if the dredging restoration project is started in 2004 and completed in 2007, as currently scheduled. The need for maintenance dredging may occur before 2017, due to the inherent variability in sediment transport and deposition in the watershed. The annuity fund will need to accumulate approximately \$30 million for the maintenance dredging that will be required in 2017. The MOA will specify that the principal in the fund will not be spent, but will be used, along with other funds, to generate the necessary funding for maintenance dredging in Newport Bay. The maintenance dredging may be needed in perpetuity, and the MOA will include provisions for the principal to be returned to the CAA in the event maintenance dredging is no longer needed in the Bay, or that the principal may be used for other TMDL compliance projects in Newport Bay, if both the City and the Regional Board agree to an amendment to the MOA. The MOA will also allow for the allocation of income from the fund to other TMDL compliance projects in the Bay, if agreed to by both parties under the MOA. The MOA will be modeled after the MOA between the Coastal Conservancy and the San Elijo Lagoon Conservancy, which was established for similar maintenance dredging, in perpetuity, in San Elijo Lagoon in San Diego County.

RECOMMENDATION:

Adopt Resolution No. R8-2002-0047

Attachment: Resolution No. R8-2002-0047

California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. R8-2002-0047

Resolution Requesting Cleanup and Abatement Account Funds (American
Trader Settlement) for Cleanup of Discharges to Newport Bay, Maintenance
Dredging, and TMDL Compliance Fund

WHEREAS:

1. Section 13440-43 of the California Water Code established the State Water Pollution Cleanup and Abatement Account (CAA or Account) to be administered by the State Water Resources Control Board (State Board).
2. Grants to public agencies and the Regional Boards are available from the Account. The State Board may order that funds be paid from the Account to a public agency or the Regional Board to assist cleaning up a waste, or abating its effects, on waters of the State.
3. There is a serious threat to public health from microbial pollution, toxicity, and sedimentation in Newport Bay waters at numerous locations. These water quality problems are exacerbated by sedimentation that impedes circulation, eutrophication from nutrients (including a major source of phosphorous in the sediment), and discharges of toxic substances in the sediment. The Orange County Health Officer routinely closes portions of the Bay for extended periods during peak recreation periods due to microbial contamination of the bay waters. All the sources of these problems have not been identified. Low mixing due to siltation and urban runoff from tributary areas discharging into the bay from storm drains are suspected sources of the microbial contamination.
4. The Regional Board has established Total Maximum Daily Loads (TMDLs), in accordance with Section 303(d) of the Clean Water Act, for discharges of fecal coliform bacteria, sediment, and nutrients into Newport Bay, in order to correct these serious water quality problems. The USEPA will be establishing TMDLs for a number of toxic substances in Newport Bay water, and toxic substances in the sediment. The Regional Board has also adopted Implementation Plans for the adopted TMDLs, and is developing an implementation plan for the TMDLs for toxic substances that will be promulgated by the USEPA.
5. The Region Board, the Department of Fish and Game, the City of Newport Beach, the County of Orange, and other cities in the Newport Bay

watershed have established the Newport Bay Watershed Management and Executive Committees. This Watershed Committee has developed and implemented plans to comply with the TMDLs established by the Regional Board. All of the TMDLs established by the Board require that watershed-based solutions be developed by the watershed stakeholders, and that the stakeholders jointly fund and implement these projects throughout the watershed.

6. The most significant project being developed and implemented by the watershed stakeholders is the restoration and expansion of the two sediment retention basins in Upper Newport Bay that are part of the watershed sediment control plan, including a plan to ensure the long term maintenance dredging for these basins. This project is in design and scheduled to start construction in early 2004. As part of this project, the Corps of Engineers requires that the local agency participants in the project, the County of Orange and the City of Newport Beach, provide assurances that they will provide for the long-term maintenance of the restored areas in Newport Bay.
7. The CAA received approximately \$3.8 million from the American Trader settlement, resulting from an oil spill that occurred along the Newport Coast. The City of Newport Beach and the Regional Board are jointly applying for the CAA funds from this settlement, to be used for water quality improvement and cleanup projects in Newport Bay. The main project to be funded is the long term maintenance dredging of Newport Bay to ensure compliance with the TMDL for sediment. The funds will be put into an annuity account by the City and invested in low risk annuities to generate funding for maintenance dredging in Newport Bay, in perpetuity. It is estimated that maintenance dredging needs will start at \$3 million per year, following the completion of the dredging/restoration project, and reduce over time as the watershed is built out and sediment transport reaches an equilibrium. It may take 50 to 200 years for the watershed to stabilize. Based on past experience, there is also a need for more maintenance dredging after El Nino years and major storm events, which cannot be predicted. Therefore, the City will need to manage the maintenance-dredging fund on an as-needed basis. The City will use the \$3.8 million in principal, along with other funds, to generate the income necessary for the maintenance dredging. Other agencies and watershed stakeholders will add to the account to meet the maintenance dredging needs and to fund other TMDL compliance projects in Newport Bay.
8. The Regional Board will enter into a Memorandum of Agreement (MOA) with the City to establish and manage the annuity fund. The MOA will be completed by May 31, 2002, and the Regional Board will then request the transfer of CAA funds to the annuity account. It has been estimated by the Corps of Engineers that the first maintenance dredging will be required by

approximately 2017, if the dredging restoration project is started in 2004 and completed in 2007, as currently scheduled. The need for maintenance dredging may occur before 2017, due to the inherent variability in sediment transport and deposition in the watershed. The annuity fund will need to accumulate approximately \$30 million for the maintenance dredging that will be required in 2017. The MOA will specify that the principal in the fund will not be spent, but will be used, along with other funds, to generate the necessary funding for maintenance dredging in Newport Bay. The maintenance dredging may be needed in perpetuity, but the MOA will include provisions for the principal to be returned to the CAA in the event maintenance dredging is no longer needed in the Bay, or that the principal may be used for other TMDL compliance projects in Newport Bay, if both the City and the Regional Board agree to an amendment to the MOA. The MOA will also allow for the allocation of income from the fund to other TMDL compliance projects in the Bay, if agreed to by both parties under the MOA. The MOA will be modeled after the MOA between the Coastal Conservancy and the San Elijo Lagoon Conservancy, which was established for similar maintenance dredging, in perpetuity, in San Elijo Lagoon in San Diego County.

9. After notice to all interested parties, this Regional Board conducted a public hearing on April 26, 2002 to consider all evidence introduced at and prior to the hearing with regard to the request for Account monies for the Newport Bay Maintenance Dredging and TMDL Compliance Fund.

THEREFORE, BE IT RESOLVED THAT:

1. The project described in Attachment 1 is recommended to the State Board for allocation of funds from the Account.
2. The total amount of funds requested from the Account for this project is \$3,800,000 (three million eight hundred thousand dollars)

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 26, 2002.

Gerard J. Thibeault
Executive Officer